

V. CASELOADS

Goal: Caseloads must not be oppressive, and should match counsel's experience, training, and expertise.

A. Governing Principle:

Counsel caseloads should be governed by the following:

1. Individual Public Defender. Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their work loads are unmanageable. Whenever a salaried or contracting counsel determines, in the exercise of counsel's best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases, will lead to furnishing representation lacking in quality or the breach of professional obligations, the attorney is required to inform the Regional Public Defender's Office, who shall inform the Chief Public Defender. The Chief Defender will then inform the Montana Public Defender Commission.

2. Chief Public Defender. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Whenever the Chief Public Defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will, by reason of their excessive size and complexity, interfere with the rendering of quality representation, or the breach of professional obligations, the Chief Public Defender is required to inform the Montana Public Defender Commission, which in turn will inform the Law and Justice Interim Committee, the Legislative Finance Committee, and the Office of Budget and Program Planning and shall take all reasonable steps to alleviate the situation.

B. Caseload Evaluation:

1. In attempting to establish caseload standards for public defender offices, the Commission encountered a number of difficulties. In considering maximum caseload standards, it is inherently difficult to compare the work required for different types of cases. For example, juvenile, civil commitment, misdemeanor, and felony cases all require different amounts of time to adequately handle. Some misdemeanors may require 30 or 40 hours, whereas some felonies may require 3 hours. Each case is so individually different, that it is nearly impossible to set rigid numerical objectives. Also, physical and geographical factors can influence an office's caseload capacity as well. An office which from a single location in a geographically large jurisdictional area is required to serve numerous distant scattered courts has a lower caseload capacity per attorney than an office in a geographically small jurisdiction or one in which all of the courts, the jail, and the public defender's office are housed in a single building.

2. The caseload of counsel should allow him or her to give each client the time and effort necessary to ensure effective representation. Regional public defender offices, contract counsel, and assigned counsel should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. Caseload limits should be determined by the number and

type of cases being accepted, and on the local prosecutors charging and plea-bargaining practices. It is the Commission's intention in considering caseloads, that the caseload of each counsel shall be considered by the criteria of reasonableness. The American Bar Association standards for criminal justice call heavy caseloads "one of the most significant impediments to the furnishing of quality defense services for the poor" and note that lawyers with too many clients may not be able to carry out the basic responsibilities outlined in the code of professional responsibility. One measure of the reasonableness of an attorney's caseload is to assess the amount of time an attorney would spend on a case under these standards. An accepted national standard for public defender attorneys is to work approximately 2,000 hours per year. One serious case requiring 50-100 hours to bring to trial, limits the time an attorney can devote to his or her remaining cases. In setting these maximum caseload levels, it is the Commission's intent that the maximum caseload levels of each attorney be judged by considering the complexity of the case, trial preparation, and travel. In other words, if a public defender works diligently and efficiently 40 hours per week, then the number of cases he or she is able to handle would be considered reasonable. Conversely, to require a public defender attorney to work diligently and efficiently more than 40 hours per week would be considered an unreasonable caseload.

3. A "case" consists of all charges against a single defendant arising out of a single event, transaction, or occurrence, or all charges arising out of a series of related incidents charged in a single information or complaint (including collateral matters such as probation violations which do not require a separate dispositional hearing) and should be counted and reported as one case. If a separate probation revocation hearing is required, the probation hearing shall be counted as a separate misdemeanor case. If two or more defendants are charged in a single information or complaint, the charges against each defendant should be counted and reported as separate cases.

4. Caseloads should not exceed the following:
- a. 150 felony cases (excluding those in which the death penalty is being sought) per attorney per year; or
 - b. 300 misdemeanor cases per attorney per year; or
 - c. 250 misdemeanor juvenile offender cases per attorney per year; or
 - d. 60 juvenile dependency clients per attorney per year; or
 - e. 100 civil commitment cases per attorney per year; or
 - f. 25 appeals to the Montana Supreme Court per attorney per year; or
 - g. 25 post-conviction matters per attorney per year; or
 - h. 12 petitions for *certiorari* or to the United States Supreme Court per attorney per year.

5. The standard applicable to each category of cases is not a suggestion or guideline, but is intended to be a maximum limitation on the average annual caseloads of each attorney employed as a public defender. These limits are not intended to be cumulative or aggregated, but should be applied proportionately in the case of an attorney whose caseload includes cases in more than one category. For example, an attorney may not represent defendants in 150 felonies *and* 300 misdemeanor cases per year. Again, based on the standard of reasonableness, the limits above may also have to be adjusted downward in rural areas where attorneys must travel great distances between courts.

6. The Montana Public Defender Commission intends to review this Standard as soon as it is able to accumulate reliable statistical data that reflects the actual case loads (both numerical and hourly) of public defenders employed in each Regional Public Defender Office, and may modify these numerical limits or adopt weighting criteria as it deems appropriate. The risk of an innocent person being unjustly convicted and of accused persons receiving unequal treatment because they are too poor to retain private counsel mandates that caseloads be reviewed periodically.